



STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

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Transaction ID 66779693
Case No. 16-CE-11-887, 14-CE-11-845**

In the Matter of

HAWAII FIRE FIGHTERS ASSOCIATION,
IAFF, LOCAL 1463, AFL-CIO,

Complainant(s),

and

RICK BLANGIARDI, Mayor, City and
County of Honolulu; LIONEL CAMARA,
JR., Acting Fire Chief, Honolulu Fire
Department, City and County of Honolulu;
HONOLULU FIRE DEPARTMENT, City
and County of Honolulu; and CITY AND
COUNTY OF HONOLULU,

Respondent(s).

CASE NO(S). 14-CE-11-845

ORDER NO. 3782

ORDER GRANTING COMPLAINANT'S
MOTION TO ENFORCE BOARD ORDER
NO. 3730 AND DENYING
RESPONDENT'S MOTION TO STAY
ENFORCEMENT OF ORDER PENDING
APPEAL

In the Matter of

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CASE NO(S). 16-CE-11-887

**ORDER GRANTING COMPLAINANT'S MOTION TO ENFORCE
BOARD ORDER NO. 3730 AND DENYING RESPONDENT'S
MOTION TO STAY ENFORCEMENT OF ORDER PENDING APPEAL**

1. Introduction

Complainant HAWAII FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 1463, AFL-CIO (HFFA) filed a motion to enforce Order No. 3730, Granting, in Part, and Denying, in Part, HFFA/IAFF Motion for Award of Attorneys' Fees and Costs and Dismissing and Closing the Case, issued by the Hawai'i Labor Relations Board (Board) on April 5, 2021.

Respondents RICK BLANGIARDI, Mayor, City and County of Honolulu (Blangiardi); LIONEL CAMARA, JR., Acting Fire Chief, Honolulu Fire Department, City and County of Honolulu (Camara, Jr.); HONOLULU FIRE DEPARTMENT, City and County of Honolulu (HFD); and CITY AND COUNTY OF HONOLULU (CCH, and collectively with Blangiardi, Camara, Jr., and HFD, Respondents) opposed HFFA's motion to enforce and submitted a counter motion to stay enforcement of Order No. 3730 pending appeal.

The Board held a hearing on the two motions, and both parties were afforded a full and fair opportunity to submit evidence and argument to the Board.

In support of Board enforcement of Order No. 3730, HFFA argues that Order No. 3730 has not been stayed, and Hawai'i Revised Statutes (HRS) § 377-9 specifically provides that filing for judicial review under HRS § 377-9(f) does not stay enforcement of the Board's Order.

Respondents respond that they are likely to prevail on an appeal of Order No. 3730; therefore, enforcement of the order would be improper. Respondents further argue that the Board awarded excessive and unreasonable attorneys' fees in Order No. 3730.

The Board is not persuaded by Respondents' arguments, and the Board does not believe that Respondents are likely to prevail on appeal. However, even if Respondents prevail on appeal, the Circuit Court (Court) could order that HFFA repay any fees found to be unreasonable.

Respondents' counsel represented to the Board that Respondents have monies available to pay HFFA in accordance with Order No. 3730. In addition, Respondents made no argument that HFFA would refuse or be unable to repay any monies received. Therefore, there is no harm for Respondents to pay HFFA the amount awarded. If their appeal succeeds, Respondents could request the Court to order HFFA to repay the monies paid to HFFA under Order No. 3730.

After full consideration of the evidence and arguments on the motion, the Board grants HFFA's motion to enforce and denies Respondents' motion to stay enforcement for the reasons laid out below.

Any conclusion of law improperly designated as a finding of fact is deemed or construed as a conclusion of law; any finding of fact improperly designated as a conclusion of law is deemed or construed as a finding of fact.

2. Findings of Fact

HFFA is the employee organization¹ and exclusive representative² for bargaining unit 11 (BU 11). Under HRS § 89-6(a)(11), BU 11 is defined as “firefighters.”

Blangiardi is one of the employers³ for BU 11, and Camara, Jr. is Blangiardi’s designated representative in dealing with BU 11 members. Blangiardi, as Mayor, represents CCH, and Camara, Jr., as Acting Fire Chief, represents HFD.

The Board issued Order No. 3730, ordering the following:

1. Respondents to pay to HFFA \$83,809.00 in attorney’s fees for Trask’s work on this case, which includes the taxes requested;
2. Respondents to pay to HFFA \$15,346.86 in attorney’s fees for Covert’s work on this case, which includes the taxes requested; and
3. Respondents to pay to HFFA \$5,602.00 in costs.

Respondents have not complied with any portion of Order No. 3730.

Respondents appealed Order No. 3730 to the Circuit Court in accordance with HRS § 91-14. No Motion to Stay Order No. 3730 has been filed with the Circuit Court.

3. Discussion and Conclusions of Law

HFFA moves the Board to enforce Order No. 3730 per HRS § 377-9⁴ and Hawai‘i Administrative Rules (HAR) § 12-42-51⁵, alleging that Respondents failed to comply with Order No. 3730. Respondents have made clear that they have no intention of complying with Order No. 3730 and ask the Board to issue an order staying enforcement of Order No. 3730.

The Board addresses the motion to stay enforcement first. HRS § 377-9(d) provides:

...Pending the final determination of the controversy the board may, after hearing, make interlocutory orders which may be enforced in the same manner as final orders...

HAR § 12-42-48, Interlocutory Order, states:

Pending the final determination of the controversy the board may, after hearing, make interlocutory orders which may be enforced in the same manner as final orders.

However, neither sets forth the standards through which the Board may issue an interlocutory order. In Order No. 912, the Board adopted the standards applicable in the judicial system for interlocutory injunctive relief. HGEA v. Dep't of Educ., Case No. CE-03-170a-c, Order No. 912, at *2-3 (October 29, 1992) (<https://labor.hawaii.gov/hlrp/files/2019/01/HLRB-Order-912.pdf>). The Board stated:

...The decision maker should consider: 1) whether the party seeking the injunction is likely to prevail on the merits; 2) whether the balance of irreparable damage favors the issuance of the interlocutory injunction; and 3) whether the public interest supports the granting of the injunction.

(*citing* Penn v. Transportation Lease Hawaii, Ltd., 630 P.2d 646, 2 Haw.App. 272 (1981)).

In considering the likelihood that Respondents will prevail on appeal, the Board looks to the latest of Respondents' series of appeals. Respondents argue that the Board made clear errors in its order and, among other things, attempts to relitigate the issue of HFFA prevailing in both cases, a matter that has already been settled by the Circuit Court in Civil Nos. 1CCV-20-0001454 and 18-1-1088-07.

The Board disagrees that it made clear errors in its order. HFFA certainly did not receive a windfall, as the Board's order reduced the attorneys' fees by nearly forty thousand dollars. A review of Order No. 3730 shows that the Board took a great deal of time and effort to calculate the attorneys' fees awarded based on the Board's determination of what was reasonable and appropriate under the circumstances.

The Board, among other things, went through every single billing entry to consider whether clerical tasks were included. *See*, Schefke v. Reliable Collection Agency Ltd., 96 Hawai'i 408, 458, 32 P.3d 52, 102 (2001). The Hawai'i Supreme Court has found that block-billed hours may be excluded where the Board cannot distinguish between compensable and non-compensable tasks. Haw. Ventures, LLC v. Otaka, Inc., 116 Hawai'i 465, 475, 173 P.3d 1122, 1132 (2007). The Board, further, is permitted to deal with the block-billed entries, accounting for the increased difficulty in determining the reasonableness of the hours. Gurrobat v. HTH Corp., 135 Hawai'i 128, 135, 346 P.3d 197, 205 (2015).

Respondents may have found it impossible to determine a reasonable amount of time for certain tasks. That does not mean that the Board found it impossible. The Board exercised its discretion in using its judgment to reduce the block-billed entries based on the presence of clerical tasks appropriately.

Further, the Board again reminds Respondents that the Board found that HFFA prevailed in both cases in this consolidated case in Board Order Nos. 3368 and 3658. The Circuit Court upheld the Board's finding and conclusion in Civil Nos. 1CCV-20-0001454 and 18-1-1088-07.

Accordingly, as the prevailing party in both cases, HFFA is permitted to recover fees for both cases.

Therefore, the Board finds that Respondents have little likelihood of success on appeal.

Even if Respondents did succeed in any part of their appeal from Order No. 3730, the Board finds it highly unlikely that the Circuit Court would order that no attorneys' fees be awarded to HFFA, given HFFA's status as the prevailing party. Therefore, the Board finds that, on this count, it would not be appropriate to stay enforcement of Order No. 3730.

Turning to the second issue, Respondents do not argue any irreparable injury from the Board declining to stay enforcement of Order No. 3730. Indeed, Respondents' counsel represented that Respondents have the monies available to pay to HFFA; Respondents simply do not wish to do so. Nor have Respondents argued that HFFA would be unable to or would not repay any monies paid should Respondents prevail on appeal. Should Respondents prevail in any part on appeal, Respondents could request whatever amount the Circuit Court orders to be returned to them from HFFA.

Further, the courts have found that monetary damage is not an irreparable injury. *See, Stop H-3 Ass'n v. Volpe*, 353 F.Supp. 14, 18 (1972). Payment of attorneys' fees and costs—the only issue in this order—is clearly solely a monetary issue, and therefore cannot be considered an irreparable injury.

Accordingly, the Board finds no irreparable injury if a stay is not granted.

Respondents further have not put forth any argument as to the public interest in staying enforcement.

As Respondents have failed to succeed on any of the required elements, the Board must deny Respondents' motion to stay enforcement.

If the Board does not stay enforcement of Order No. 3730, the Board must then enforce Order No. 3730. Accordingly, the Board will grant HFFA's motion to enforce.

4. Order

Based on the above, the Board orders:

- 1) Respondents to comply with Order No. 3730 within thirty days of this Order; and

- 2) Submit to the Board a compliance report with evidence of compliance within thirty-five days of this Order.

Should Respondents fail to comply with the Board's order, the Board will issue an order to show cause as to why Respondents should not be held in contempt and face sanctions, up to and including disbarment of Respondent's counsel, as permitted by HAR § 12-42-8(g)(9).

DATED: Honolulu, Hawai'i, July 19, 2021.



HAWAII LABOR RELATIONS BOARD

Manu O. Oshiro

MANU O. OSHIRO, Chair

Resnita A. D. Moepono

RESNITA A.D. MOEPONO, Member

EXCUSED

J N. MUSTO, Member

Copies sent to:

Rebecca Covert, Esq.

Ernest Nomura, Deputy Corporation Counsel

¹ Hawai'i Revised Statutes (HRS) § 89-2 defines "employee organization" as:

"Employee organization" means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund, and other terms and conditions of employment of public employees.

² HRS § 89-2 defines “exclusive representative” as:

“Exclusive representative” means the employee organization certified by the board under section 89-8 as the collective bargaining agent to represent all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.

³ HRS § 89-2 defines “employer” as:

“Employer or “public employer” means...the respective mayors in the case of the counties...and any individual who acts in their interest in dealing with public employees.

⁴ HRS § 377-9 states in relevant part:

(e) If any person fails or neglects to obey an order of the board while the same is in effect the board may petition the circuit judge of the judicial circuit wherein the person resides or usually transacts business for the enforcement of the order and for appropriate temporary relief or restraining order...

⁵ HAR § 12-42-51, Enforcement of order, provides:

If any party fails or neglects to obey an order of the board while the same is in effect the board may petition the circuit judge of the judicial circuit wherein such party resides or usually transacts business for the enforcement of the order and for appropriate temporary relief or restraining order, and shall certify the file in the court the record in the proceedings, including all documents and papers on file in the matter, the pleadings and testimony upon which the order was entered, and the decision and order of the board. Upon such filing the board shall cause notice thereof to be served upon the party by mailing a copy to the party’s last known post office address, and thereupon the judge shall have jurisdiction in the premises.

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